

POSTAL REGULATORY COMMISSION

In the Matter of:)
)
REVIEW OF NONPOSTAL SERVICES) Docket No.: MC2008-1

Suite 200
Postal Regulatory Commission
901 New York Avenue, N.W.
Washington, D.C.

Volume 1
Wednesday, February 11, 2009

The above-entitled matter came on for a prehearing conference, pursuant to notice, at 10:02 a.m.

BEFORE:

HON. DAN G. BLAIR, CHAIRMAN
HON. Nanci E. LANGLEY, VICE CHAIRMAN
HON. TONY L. HAMMOND, COMMISSIONER
HON. RUTH Y. GOLDWAY, COMMISSIONER
HON. MARK ACTON, COMMISSIONER

APPEARANCES:

On Behalf of United States Postal Service:

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On Behalf of Neopost, Inc.:

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On Behalf of Epostmarks:

DAN CURTIS

P R O C E E D I N G S

(10:02 a.m.)

CHAIRMAN BLAIR: Good morning. The Commission will come to order.

This is a prehearing conference in Docket No. MC2008-1, Phase 2. I'm Dan Blair, Chairman of the Postal Regulatory Commission, and with me this morning are Vice Chairman Nanci Langley and Commissioners Mark Acton, Ruth Goldway and Tony Hammond.

Docket No. MC2008-1 was established to implement provisions of the Postal Accountability and Enhancement Act concerning the appropriate treatment of nonpostal services offered by the United States Postal Service.

Commission Order No. 154 resolved most issues. However, the Commission found the record insufficient to allow for a reasoned and fair determination of the appropriate treatment of three Postal Service revenue-generating activities. Therefore, the Commission announced it would establish a second phase of the proceeding to develop a more complete record on those three items.

The three items still pending are the Postal Service licensing and branding of mailing and shipping products, a program providing warranty repairs of

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1 certain products and the Postal Service's retail sale
2 of recorded music.

3 Commission Order No. 168, issued January 9,
4 2009, initiated Phase 2 and set the date for today's
5 prehearing conference. That order also announced that
6 persons submitting filings in the initial phase of
7 this proceeding will be deemed a participant in Phase
8 2 and need not submit a notice of intervention.

9 Additionally, several petitions for
10 intervention in Phase 2 have been received.

11 Before I ask counsel to identify themselves,
12 I would like to yield to my fellow commissioners for
13 any comments. At this point, I would like to yield to
14 Commissioner Goldway for any opening remarks or brief
15 comments.

16 COMMISSIONER GOLDWAY: I'm happy to welcome
17 the participants and interested parties who are here.
18 We don't get together in this fashion as often as we
19 used to, but I think these proceedings are helpful,
20 and I'm looking forward to the comments that we hear.

21 CHAIRMAN BLAIR: Thank you, Commissioner.
22 Commissioner Acton.

23 COMMISSIONER ACTON: I have nothing official
24 to add, Mr. Chairman, but I would like to mention that
25 we have a couple new staff since the last time we did

1 this on the roll. One is your special assistant,
2 Trisha Hollis I believe, who joined us a couple of
3 weeks ago, so it's great to have her here.

4 CHAIRMAN BLAIR: And she is in the back of
5 the room right now.

6 COMMISSIONER ACTON: That's right. And also
7 Vice Chairman Langley has recruited Darcy?

8 VICE CHAIRMAN LANGLEY: Tokyoka.

9 COMMISSIONER ACTON: Tokyoka.

10 VICE CHAIRMAN LANGLEY: Also in the back.

11 COMMISSIONER ACTON: So welcome to both of
12 you. That's all. Thanks.

13 CHAIRMAN BLAIR: Thanks, Commissioner. Vice
14 Chairman Langley.

15 VICE CHAIRMAN LANGLEY: Thank you. I too
16 welcome everybody today, and I appreciate having this
17 opportunity to continue looking into the issues that
18 we're going to discuss in Phase 2.

19 CHAIRMAN BLAIR: Thank you. Commissioner
20 Hammond.

21 COMMISSIONER HAMMOND: I share the
22 sentiments of my colleagues. Thank you.

23 CHAIRMAN BLAIR: Thank you. Brief and to
24 the point like a true Missourian. Thank you.

25 At this point, I would like counsel to

1 identify themselves for the record and the party that
2 they represent. So the United States Postal Service?

3 MR. COOPER: Richard Cooper, also known as
4 Rick Cooper, and with me is Nan McKenzie.

5 CHAIRMAN BLAIR: Thank you, Mr. Cooper.
6 The Alliance of Nonprofit Mailers?

7 (No response.)

8 CHAIRMAN BLAIR: The American Stamp
9 Collectibles, Incorporated?

10 (No response.)

11 CHAIRMAN BLAIR: The Association for Postal
12 Commerce?

13 MS. BRICKMAN: Good morning. I'm Rita
14 Brickman for the Association for Postal Commerce.

15 CHAIRMAN BLAIR: Thank you, Ms. Brickman.
16 DigiStamp, Incorporated?

17 (No response.)

18 CHAIRMAN BLAIR: The Direct Marketing
19 Association?

20 (No response.)

21 CHAIRMAN BLAIR: The Electronic Frontier
22 Foundation?

23 (No response.)

24 CHAIRMAN BLAIR: Epostmarks?

25 MR. CURTIS: Right here, sir. I'm Dan

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1 Curtis and I work with the folks at Epostmarks.

2 CHAIRMAN BLAIR: I'm sorry, Mr. Curtis. You
3 said you were with Epostmarks?

4 MR. CURTIS: I'm sorry, sir?

5 CHAIRMAN BLAIR: I'm sorry. You identified
6 yourself with Epostmarks?

7 MR. CURTIS: Yes.

8 CHAIRMAN BLAIR: Thank you, Mr. Curtis.
9 Franko Tide Postalia?

10 (No response.)

11 CHAIRMAN BLAIR: GrayHair Software,
12 Incorporated?

13 (No response.)

14 CHAIRMAN BLAIR: Information Assurance
15 Consortium?

16 (No response.)

17 CHAIRMAN BLAIR: Information Technology
18 Industry Council?

19 (No response.)

20 CHAIRMAN BLAIR: Lexmark International?

21 (No response.)

22 CHAIRMAN BLAIR: The Magazine Publishers of
23 America?

24 (No response.)

25 CHAIRMAN BLAIR: The National Postal Policy

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1 Council?

2 (No response.)

3 CHAIRMAN BLAIR: Neopost, Incorporated?

4 MR. SHEEHAN: Robert Sheehan for Neopost.

5 CHAIRMAN BLAIR: Thank you, Mr. Sheehan.

6 How do you spell your last name, please, just for the
7 record?

8 MR. SHEEHAN: S-H-E-E-H-A-N.

9 CHAIRMAN BLAIR: Thank you.

10 Parcel Shippers Association?

11 MR. MYERS: Pierce Myers for Parcel Shippers
12 Association.

13 CHAIRMAN BLAIR: Thank you, Mr. Myers.

14 Pinpoint, LLC?

15 (No response.)

16 CHAIRMAN BLAIR: Pitney Bowes, Incorporated?

17 MR. SCANLON: Michael Scanlon and Pierce
18 Myers on behalf of Pitney Bowes.

19 CHAIRMAN BLAIR: Thank you, Mr. Scanlon.

20 Mr. David Popkin?

21 (No response.)

22 CHAIRMAN BLAIR: The Public Representative?

23 MR. SIDMAN: Good morning, Mr. Chairman.

24 Robert Sidman on behalf of The Public Representative.

25 CHAIRMAN BLAIR: Thank you, Mr. Sidman.

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1 Stamps.com?

2 (No response.)

3 CHAIRMAN BLAIR: U.S. Chamber of Commerce?

4 (No response.)

5 CHAIRMAN BLAIR: Valpak Direct Marketing
6 Systems, Incorporated and Valpak Dealers Association?

7 (No response.)

8 CHAIRMAN BLAIR: Thank you. Is there anyone
9 that I've missed? If not, I'll go on further.

10 Order No. 154 directed the Postal Service to
11 provide sworn statements addressing each of the three
12 issues I previously described. The Postal Service did
13 file statements concerning each of these three issues
14 and activities.

15 Order No. 154 also indicated that if the
16 Postal Service identified any other activities which
17 upon further consideration it believed might qualify
18 as a properly grandfathered non-Postal Service issue
19 identified in further review in this proceeding. Mr.
20 Cooper, has the Postal Service identified any such
21 additional activities for consideration in this phase
22 of Docket No. MC2008-1?

23 MR. COOPER: No, we have not, not at this
24 time.

25 CHAIRMAN BLAIR: Thank you, Mr. Cooper.

1 My understanding based on my review of the
2 Postal Service's filings, the Postal Service believes
3 that the retail sale of music recordings is more
4 appropriately categorized as a postal service and
5 should not be dealt with in Phase 2. Mr. Cooper, am I
6 correct in that interpretation?

7 MR. COOPER: Yes, we consider it an official
8 licensed retail product which was handled in the first
9 phase.

10 CHAIRMAN BLAIR: Good. Our task this
11 morning then is to identify what procedural steps are
12 appropriate and necessary to allow the Commission to
13 resolve the outstanding issues in Phase 2 of the case.

14 The issues before the Commission concern
15 whether the Postal Service should be authorized to
16 continue to provide the specified nonpostal services.
17 The Postal Service believes it should be allowed to do
18 so and therefore it is in the position of the
19 proponent. The earlier Commission order indicates
20 that the Postal Service would be able to rely on the
21 sworn statements it provided in Phase 2 and any
22 additional statements or information provided in the
23 initial phase of Docket No. MC2008-1.

24 As a preliminary matter, I believe it would
25 be helpful if the Postal Service were to identify all

1 of the statements and materials that it intends to
2 rely on. Therefore, I will direct the Postal Service
3 to submit by February 26, 2009, a list of the
4 statements and materials that constitute its direct
5 case in support of authorization to continue to
6 provide these services.

7 Meanwhile, if any participant believes they
8 will need to engage in discovery as provided for in
9 our Rules of Practice and Procedure, I would like them
10 to begin that process immediately.

11 Does any participant expect to file
12 discovery requests in this case? Ms. Brickman?

13 MS. BRICKMAN: I would just like to reserve
14 the possibility that we might file some discovery.

15 CHAIRMAN BLAIR: Thank you. Any estimate of
16 how much time you will need to make that
17 determination?

18 MS. BRICKMAN: A couple days.

19 CHAIRMAN BLAIR: Okay. Thank you.

20 So, at this point, no others are indicating
21 their intentions to seek discovery. It's my intention
22 to issue a scheduling order establishing hearing dates
23 for receiving the Postal Service evidence. I'd like
24 to issue that schedule by the end of next week. I'll
25 allow participants up until a week from today,

1 February 19, 2009, to indicate whether discovery of
2 the Postal Service is necessary and to estimate the
3 amount of time needed for discovery.

4 Mr. Cooper, I would like you to determine
5 when the individuals who have submitted sworn
6 statements will be available to testify in April or
7 May, and if you could provide that information by
8 February 19, 2009, we would appreciate it.

9 MR. COOPER: We will do so.

10 CHAIRMAN BLAIR: Thank you, sir.

11 MR. SCANLON: Mr. Chairman, a point of
12 clarification.

13 CHAIRMAN BLAIR: Mr. Scanlon?

14 MR. SCANLON: Will there be a discussion of
15 whether other parties intend to produce witnesses or
16 whether other parties feel it's necessary to have
17 something other than a paper briefing on this issue?

18 CHAIRMAN BLAIR: We will, and we'll take
19 that under advisement, but we anticipate that will be
20 forthcoming.

21 Again, it's my current intention to issue a
22 scheduling order establishing hearing dates for
23 receiving the Postal Service evidence. I'd like to
24 issue that schedule by the end of next week. We're
25 going to allow participants up until a week from today

1 to indicate whether discovery is necessary.

2 Mr. Cooper, would you indicate for us the
3 individuals who have submitted sworn statements and be
4 available to testify in April or May?

5 MR. COOPER: Yes. I understood you needed
6 their availability by the 19th.

7 CHAIRMAN BLAIR: That's correct. And does
8 any participant know at this time that they will want
9 to file evidence either in support of or in opposition
10 to the Postal Service continuing providing these
11 services?

12 MR. SCANLON: Mr. Chairman, this is Michael
13 Scanlon on behalf of Pitney Bowes.

14 CHAIRMAN BLAIR: Thank you, Mike.

15 MR. SCANLON: We intend to file sworn
16 statements in opposition, particularly with respect to
17 the commercial licensing activities of the Postal
18 Service. It's our position, however, that that issue
19 could be addressed like the other 14 nonpostal
20 services on paper only and that we need not have
21 hearings.

22 CHAIRMAN BLAIR: Thank you.

23 I have another matter I'd like to raise at
24 this time. Two participants in this phase have filed
25 notices of appeal of our Order No. 154. Appeals were

1 filed by Pitney Bowes and the United States Postal
2 Service. Does any participant believe that the
3 existence of those cases should have a procedural
4 impact on this proceeding? Mr. Cooper?

5 MR. COOPER: Mr. Chairman, it's the
6 intention of the Postal Service to cooperate fully in
7 these proceedings and we don't see any reason to delay
8 them. Our position is that ultimately some
9 determinations in the remainder of Docket MC2008-1,
10 some of the classifications that may result from this
11 docket may not be needed if the Court rules that they
12 are outside the Commission's jurisdiction, but we
13 intend to engage fully in developing whatever
14 classifications the Commission thinks are needed so
15 that they will be in place in the event that the
16 Commission rules that they are needed.

17 CHAIRMAN BLAIR: Thank you, Mr. Cooper.
18 Mr. Scanlon?

19 MR. SCANLON: Mr. Chairman, on behalf of
20 Pitney Bowes, we don't think there is any need to
21 delay Phase 2 proceeding. In fact, we think there is
22 every reason to move forward. In our judgment, many
23 of the issues on appeal may be resolved in Phase 2.

24 CHAIRMAN BLAIR: Thank you for your comment.
25 Does any participant have a procedural

1 matter that they would like to raise with us at this
2 time?

3 (No response.)

4 CHAIRMAN BLAIR: Do any of my colleagues
5 have any questions or comments at this time?

6 COMMISSIONER GOLDWAY: I have a question
7 regarding the issue of CDs. I just wanted to be clear
8 as to what the process will be for reviewing that
9 matter since it's no longer in the purview of this
10 particular hearing.

11 CHAIRMAN BLAIR: Mr. Cooper, would you
12 provide for us what the Postal Service intends to file
13 regarding this product?

14 MR. COOPER: Well, we will file whatever
15 information the Commission feels that it needs. We
16 will file additional information if the Commission
17 thinks it needs additional information. However, the
18 way we view it is the CDs that we've produced in the
19 past with some exceptions are very similar to other
20 licensed retail products that we have sold and that
21 were examined in the first phase of this proceeding,
22 and the Commission did include OLRP, official licensed
23 retail products, in its product list and authorized us
24 to continue.

25 There may be some unique variations

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1 involving CDs that we may wish to offer in the future
2 perhaps as CDs prepackaged with postage on them that
3 we might consider to be a Postal Service ready-to-mail
4 item, and if we were to introduce those, we would come
5 forward with the necessary information that the
6 Commission requires for introduction of such postal
7 services.

8 CHAIRMAN BLAIR: Commissioner, do you have
9 any further questions or comments with regard to the
10 response?

11 COMMISSIONER GOLDWAY: I think it may be up
12 to us then to specify what information we need, but I
13 do think we need more information to clarify the
14 nature of that product.

15 MR. COOPER: We'd be happy to cooperate with
16 that.

17 CHAIRMAN BLAIR: Thank you, Mr. Cooper.

18 Any other Commissioners have questions or
19 comments?

20 COMMISSIONER HAMMOND: I would just second
21 what Commissioner Goldway said.

22 CHAIRMAN BLAIR: Thank you.

23 Well, if there are no more comments at this
24 point, it is 10:15. We've gotten this done in record
25 time. I appreciate the brevity of the comments by the

1 participants today, and this prehearing conference is
2 now adjourned. Thank you.

3 (Whereupon, at 10:17 a.m., the prehearing
4 conference in the above-entitled matter was
5 concluded.)

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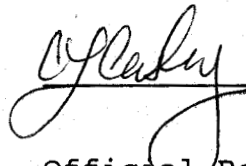
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REPORTER'S CERTIFICATE

DOCKET NO.: MC2008-1
CASE TITLE: Review of Nonpostal Services
HEARING DATE: 2/11/09
LOCATION: Washington, DC

I hereby certify that the proceedings and evidence are contained fully and accurately on the tapes and notes reported by me at the hearing in the above case before the Postal Regulatory Commission.

Date: 2/11/09



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